

***United States Court of Appeals
for the Second Circuit***



APPENDIX

B
PFS
77-1349

To be argued by
LEONARD F. JOY

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

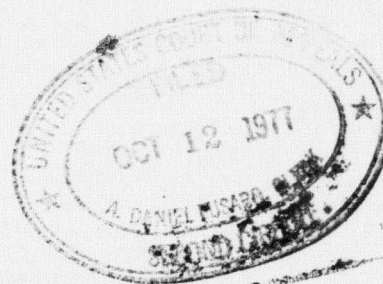
Plaintiff-Appellee,

-against-

HENRY BENTON,

Defendant-Appellant.

Docket No. 77-1349



APPENDIX TO APPELLANT'S BRIEF

ON APPEAL FROM A JUDGMENT
OF THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

MARTIN ERDMANN, ESQ.,
THE LEGAL AID SOCIETY,
Attorney for Appellant
FEDERAL DEFENDER SERVICES UNIT
509 United States Courthouse
Foley Square
New York, New York 10007
(212) 732-2971

LEONARD F. JOY,
Of Counsel.

PAGINATION AS IN ORIGINAL COPY

7/26



CRIMINAL DOCKET - U.S. DISTRICT COURT

PETTY OFFENSE PO ☐ JUDGE/MAGISTRATE Assigned U.S. ☐ vs. BENTON, Henry
OTHER MINOR OFFENSE MO ☐ 208 01 0859
OTHER MISDEMEANOR Mis ☐ Disp. Sentence
FELONY Fel ☒ District Office (LAST FIRST MIDDLE) a/k/a "Rogelio Berrios"

Case Filed Mo, Day 06 09
No. of Defs. 77 0435 02
Yr. 02

U.S. TITLE/SECTION 18:495 18:1708

OFFENSES CHARGED Uttering forged U.S. Treasury checks Possession of stolen mail

ORIGINAL COUNTS 1-5 13

U.S. MAG. CASE NO. 77-465

BAIL • RELEASE

☐ AMT ☐ Fugitive
☐ Set ☒ Pers Recog
☒ PSA

\$2,000

Date 4-14-77

☐ Bail Not Made ☐ Collateral
☐ Status Changed (See Docket) ☐ 3rd Pny Cust ☒ Other

SENTENCE

Disposition 7-1-77

☒ Convicted ☐ On All Charges
☐ Acquitted ☐ On Lesser Charge(s)
☐ Dismissed ☐ ADP ☐ WP
On Government Motion

II. KEY DATES & INTERVALS

ARREST or U.S. Custody Began 4-14-77

INDICTMENT Information 6-9-77

ARRAIGNMENT 6-16-77

TRIAL Trial Set For 6-16-77

First Appearance 6-16-77

Superseding Indict Info

Superseding COUNTS

TRIAL Trial Began 6-30-77

TRIAL Trial Ended 7-1-77

MAGISTRATE

Search Warrant Issued

Summons Issued

Arrest Warrant Issued

COMPLAINT 4-14-77

OFFENSE (In Complaint) POSTAL 18 U.S.C.-1708, 2

INITIAL APPEARANCE DATE 4-14-77

PRELIMINARY EXAMINATION OR REMOVAL HEARING

DATE 4-25-77

INITIAL INFO HJR 08AD

OUTCOME

☐ DISMISSED

☐ HELD FOR GJ OR OTHER PROCEEDING IN THIS DISTRICT

☐ HELD FOR GJ OR OTHER PROCEEDING IN DISTRICT COURT

72

J.S.B.
L.C.K.

U.S. Attorney or Asst. Patricia Anne Williams 791-1928

ATTORNEYS Defense ☐ CJA ☐ Ret ☐ Waived ☐ Self ☐ None / Other ☒ Leonard Joy, Federal Defender Services Unit 2 Lafayette St., 5th Floor, N.Y.C. 10007 577-3407

* Show last names and suffix numbers of other defendants on same indictment/information.

M. Benton-01

DATE (DOCUMENT NO.) PROCEEDINGS

pc 4-14-77 Defendant presented. Legal Aid assigned (L. Joy), defendant released on a \$2,000 PRB co-signed by Maria Benton, 823 Kelly St, Bronx, NY. Deft. address: 2442 Webster Ave, Bronx, NY.

6-9-77 INDICTMENT FILED, 77 CR 435Brieant, J.

6-16-77 Deft. (atty. Murray Mogel present) pleads not guilty. Bail continued \$2,000 unsecured PRB, co-signed by mother. Case assigned to Ward, J. for all purposes.....Brieant, J.

6-29-77 Deft w/a/p Leonard Joy present. Waiver of trial by Jury signed and approved. Trial adj'd to 6-30-77 at 9:30AM. WARD, J.

6-30-77 Suppression Hearing. Non Jury trial begins.

7-1-77 Trial cont'd and concluded. Court's finding deft GUILTY on Cts. 1&2 and not guilty on Cts/ 3,4,5&13. P.S.I. ordered. Sentence dated 7-21-77 at 2:15 P.M. Bail cont'd. WARD, J.

Cont'd on page 2.

EXCLUDABLE DELAY (a) (b) (c) (d)

A

OPPOSITE THE APPLICABLE DOCKET ENTRIES SHOW: IN SECTION V. ANY OCCURENCE OF EXCLUDABLE DELAY PER 18 USC § 3161(h)

DATE	DOCUMENT NO.	IV. PROCEEDINGS (continued)	PAGE TWO	V. EXCLUDABLE DELAY				LETTER CODE
				Start Date (a)	Start Date (b)	End Date (c)	Total (d)	
7-21-77		Filed Judgment and Probation/Commitment Order- The Deft is hereby committed to the custody of the Atty Gen for impr. for a period of TWO (2) YEARS on count1.. Imposition of Prison Sentence is Suspended on Count 2 and Deft is placed on prob. for a period of FIVE (5) YEARS. Probation to follow termination of period of confinement and subject to the standing probation order of this court, Deft., cont;d on present bail until he posts bail pending appeal fixed in the amount of \$2000.00. P.R.B. co-signed by his mother on condition the appeal is promptly prosecuted. WARD, J. (all copies issued).						A. Exemption or of hearing for mental or physical incapacity (18 USC 4244)
7-26-77		Filed Deft's NOTICE OF APPEAL to the USCA from the Judgment filed 7-21-77. Mailed Notices to U.S. ATTY and counsel for the appellant.						B. NARA Examination (28 USC 2902) C. State or Federal trials on other charges. D. Introductory Appeals E. Hearings on original motions F. Transfers from other districts (per F.R.C.P. Rules 20, 21 & 40)
8-8-77		Filed commitment and issued marshal's return						G. Defendant Motion is actually under advisement. Period of up to 30 days is excludable per 3161(h) (1) (G). H. Miscellaneous Proceedings: Probation or Parole revocation, Deportation, Extradition. I. Prosecution deferred by mutual agreement. J. Unavailability of defendant or essential witness. K. Period of mental or physical incompetence of defendant to stand trial. L. Period of NARA Commitment or Treatment. M. Superseding indictment and/or new charges. N. Defendant awaiting trial of Co-defendant when no severance has been granted. O. Continuances Granted per 3161(h) (9) (i.e. ends of justice or complexity of case outweighs defendant's interests). P. Time between guilty plea and plea withdrawal. Q. Grand Jury indictment extended per 3161 (b).

FINE AND RESTITUTION PAYMENTS					
DATE	RECEIPT NUMBER	C.D. NUMBER	DATE	RECEIPT NUMBER	C.D. NUMBER

B

A TRUE COPY
 RAYMOND E. BURCHARDT, Clerk
 By *[Signature]*
 Deputy Clerk

UNITED STATES OF AMERICA

- v -

MARJORIE H. BENTON, a/k/a
"Linda Perez", a/k/a "Elaine
Gross", a/k/a "Jeanne Pearl",
a/k/a "Marjorie Stanton", and
ELMER BENTON, a/k/a "Rogelio
Berrios",

Defendants.

INDICTMENT

77 Cr. 435

COUNTS ONE THROUGH FIVE

The Grand Jury charges:

On or about the dates hereinafter set forth in
Counts One through Five in the Southern District of New York,
MARJORIE H. BENTON, a/k/a "Linda Perez", a/k/a "Elaine Gross",
a/k/a "Jeanne Pearl", a/k/a "Marjorie Stanton", and ELMER
BENTON, a/k/a "Rogelio Berrios", the defendants, unlawfully,
wilfully and knowingly did utter and publish as true and
cause to be uttered and published as true certain false,
forged, altered and counterfeited writings, to wit, United
States Treasury checks as hereinafter described, with intent
to defraud the United States and knowing the same to be
false, forged altered and counterfeited:

COUNT	DATE	CHECK #	NAME AND ADDRESS OF TRUE PAYEE	APPROXIMATE AMOUNT
1	4/1/77	62,562,552	Ivy Brown 830 Stebbins Ave. Apt. 16, Bronx, N.Y. 10459	\$ 239.30
2	4/1/77	64,711,704	Noel G. Watkes 24 E. 118th Street Apt. 11 New York, N.Y. 10029	\$ 349.90
3	4/1/77	62,221,448	Anada Clemente 731 Union Ave. Apt. 2B Bronx, N.Y. 10455	\$ 171.50

COUNT	DATE	CHECK #	TRUE PAYEE	AMOUNT
4	4/1/77	93,125,465	Charlene Haden For Children of Beadie Haden 265 E. 165th St. Apt. 7D Bronx, N.Y. 10456	\$ 225.00
5	4/1/77	38,585,149	Anada Clemente 731 Union Ave. Apt. 2B Bronx, N.Y. 10455	\$ 77.15

(Title 18, United States Code, Sections 495 and 2.)

COUNTS SIX THROUGH TWELVE

The Grand Jury further charges:

On or about the dates hereinafter set forth in Counts Six through Twelve in the Southern District of New York, MARJORIE H. BENTON, a/k/a "Linda Perez", a/k/a "Blaine Cross", a/k/a "Jeanne Pearl", a/k/a "Marjorie Stanton", the defendant, unlawfully, wilfully and knowingly did utter and publish as true and cause to be uttered and published as true certain false, forged, altered and counterfeited writings, to wit, United States Treasury checks as hereinafter described, with intent to defraud the United States and knowing the same to be false, forged, altered and counterfeited:

COUNT	DATE	CHECK #	NAME AND ADDRESS OF TRUE PAYEE	APPROXIMATE AMOUNT
6	2/27/76	50,353,206	Mary L. Venable 659 E. 166th St. Bronx, N.Y. 10456	\$ 100.50
7	3/3/76	19,906,928	Beryl L. Yorke 835 Stebbins Ave. Apt. 2B Bronx, N.Y. 10459	\$ 150.00
8	3/19/76	12,487,507	Samuel A. Martal Quintana 473 E. 145th St. Bronx, N.Y. 10454	\$ 700.49

COUNT	DATE	CHECK #	ADDRESS OF TRUE PAYEE	APPROXIMATE AMOUNT
9	6/18/76	72,567.529	Srisacul S. Peraia Chernongvongse 1500 Grand Concourse Apt. 338 Bronx, N.Y. 10452	\$ 534.74
10	7/3/76	32,428,249	Catalio Perez 1027 Walton Avenue Apt. 11 E Bronx, N.Y. 10452	\$ 107.09
11	7/3/76	30,746.786	Daniel Martinez 1020 Walton Avenue Apt. 3E Bronx, N.Y. 10452	\$ 227.30
12	7/14/76	94,302,932	Carmen Rodriguez c/o Velazquez 1025 Gerard Ave. Apt. 3D Bronx, N.Y. 10452	\$ 67.84

(Title 18, United States Code, Section 495.)

COUNT THIRTEEN

The Grand Jury further charges:

On or about April 4, 1977 in the Southern District of New York, MARJORIE H. BERTON, a/k/a "Linda Perez", a/k/a "Elsaine Cross", a/k/a "Jeanne Pearl", a/k/a "Marjorie Stanton", and HENRY BERTON, a/k/a "Rogelio Berrios", the defendants, unlawfully, wilfully and knowingly did have in their possession the contents of a certain letter, to wit, check no. 502220202 drawn on the account of The Hartford at the Connecticut Bank and Trust Company payable to the Estate of Carl Johns, 850 Stebbins Avenue, Bronx, New York 10459, Apt. 35 in the amount of \$151.77, which check had been stolen, taken, embezzled and abstracted from and out of the mail, a post office, letter box, mail route and other authorized depository for mail matter, knowing the same to have been stolen, taken, embezzled and abstracted.

(Title 18, United States Code, Sections 1708 and 2.)

New York, MARJORIE H. BENTON, a/k/a "Linda Perez", a/k/a "Elaine Cross", a/k/a "Jeanne Pearl", a/k/a "Marjorie Stanton", the defendant, unlawfully, wilfully and knowingly did have in her possession the contents of certain letters, to wit, New York City checks as hereinafter described which had been stolen, taken, embezzled and abstracted from and out of the mail, a post office, letter box, mail route and other authorized depository for mail matter, knowing the same to have been stolen, taken, embezzled and abstracted:

<u>COUNT</u>	<u>DATE</u>	<u>CHECK #</u>	<u>NAME AND ADDRESS OF TRUE PAYEE</u>	<u>APPROXIMATE AMOUNT</u>
18	2/24/76	2179853	M. Dorch 656 E. 166th St. Bronx, N.Y. 10456	\$ 73.69
19	7/1/76	66167115	Marta Rosario 593 Oak Terrace Apt. 5E Bronx, N.Y. 10454	\$ 182.05
20	7/16/76	66466450	Hydia Morales 1025 Gerard Ave. Bronx, N.Y. 10452	\$ 221.50
21	7/16/76	66466637	Sandra Anderson 1280 Walton Ave. Apt. 3C Bronx, N.Y. 10452	\$ 150.00
22	7/19/76	66510713	Ada Arizmendi 1192 Walton Ave. Apt. C9 Bronx, N.Y. 10452	\$ 170.00

(Title 18, United States Code, Section 1703).

Foreman

ROBERT E. FISKE, JR.
United States Attorney

655-2929

MON. TO FRI. — AFTER 4 P.M.
ALL DAY SAT. & SUN.

John Webster's
RUG CLEANING LTD.

RANGE HOODS LOCKS INSTALLED
TRAVERSE RODS LIGHT FIXTURES
DEPENDABLE & REASONABLE
PROFESSIONAL SERVICE

10	9	8	7	6	5	4	3	2	1
PERMIZ								349.00	4/11/77
589.8547								4/11/77	4/11/77

1 THE COURT: The court is prepared to
2 render its decision. Miss Kruger, would you proceed
3 to lock the courtroom door.
4

5 THE CLERK: The court is about to render
6 its verdict. Anybody wishing to leave will do so
7 now or will remain seated until these proceedings are
8 concluded.

9 Will the marshal lock the door.

10 THE COURT: These are the findings, the
11 conclusions and the verdict of the court.

12 The defendant, Henry Benton, also known
13 as Rogelio Berrios, was indicted on six counts. Counts
14 1, 2, 3, 4 and 5 charge the defendant, inter alia, with
15 aiding and abetting marjorie H. Benton, also known
16 as Linda Perez, in uttering of forged U. S. Treasury
17 checks.

18 Count 13 charges the defendant, inter alia,
19 with aiding and abetting Marjorie Benton, also known
20 as Linda Perez, in the possession of a stolen check.

21 With regard to counts 1, 2, 3, 4 and 5 the
22 court finds that the government has proved beyond a
23 reasonable doubt that in each case the check (Govern-
24 ment's Exhibits 2, 3, 4, 5 and 6) was a genuine obliga-
25 tion of the United States, that the endorsements on

the backs of the checks are forgeries, and that Marjorie Benton intended to defraud the United States. Thus, the only remaining issue with regard to counts 1, 2, 3, 4 and 5 is whether the defendant aided or abetted Marjorie Benton in offering the checks to a third party, in this case the Chemical Bank, knowing the endorsements were forgeries.

Count 13 charges the defendant with aiding or abetting in the possession of stolen mail. In this case a check of The Hartford, an insurance company in the amount of \$215.77, Government's Exhibit 7.

With regard to count 13, the court finds that the government has proved beyond a reasonable doubt that the check was deposited in and sent through the mails; that it was stolen or taken from the mails on or about April 4, 1977, and that on April 7, 1977 Marjorie Benton had the check in her possession.

The court further finds that on that date Marjorie Benton knew that the check was stolen. Again, the only remaining issue with regard to this count is whether the defendant aided or abetted Marjorie Benton in committing the crime charged in count 13.

The court has considered all of the evi-

2 dence, both direct and circumstantial.

3 The court has considered the exhibits which
4 were received in evidence and the testimony, including
5 certain false exculpatory statements made by the
6 defendant on April 13, 1977 and April 14, 1977 to the
7 postal inspectors and to Assistant United States
8 Attorney James Moss. These include statements that
9 the defendant did not know the woman called Linda Perez
10 who was in fact his sister, Marjorie Benton, and further,
11 that he did not know whether she used another name or
12 where she lived.

13 Despite the fact that Linda Perez was in
14 fact his sister, Marjorie Benton, who was two years
15 younger than himself, the defendant told the assistant
16 United States attorney that he had only known Linda
17 Perez for about a week and that he did not know where
18 she lived. In fact, the court finds that she re-
19 sided with the defendant's mother at 823 Kelly Street,
20 Bronx, New York, and had resided at that address
21 for a number of years.

22 Of crucial significance is the testimony
23 of George Leitenis of the Chemical Bank. Mr. Leitenis
24 testified that on April 8, 1977, at the branch of
25 the bank where he worked in the Bronx, in the Southern

1 lza
2 District of New York, he gave two counter checks to
3 Linda Perez, who he identified from a photograph,
4 Government's Exhibit 17G in evidence, as Marjorie Ben-
5 ton. He testified that Linda Perez thereupon cashed
6 one of these two counter checks in the amount of
7 \$1200 and that within 15 minutes the defendant sought
8 to cash the other counter check in the amount of \$220.
9 At that time the defendant stated to Mr. Leitenis
10 that he had done some boiler work for Miss Perez.

11 Also of crucial significance is Government's
12 Exhibit 13, a business card taken from the defendant's
13 wallet at the time of his arrest, which contains writ-
14 ing on the reverse side, including the numbers 239,
15 followed by 4/1/77, and 349, followed by 4/4/77, which
16 coincide with the dollar amounts of the stolen checks
17 set forth in counts 1 and 2 of the indictment and the
18 dates on which they were stolen. The card also
19 contains in handwriting the name Perez and the telephone
20 number 589-8547, which coincides, except for the last
21 digit, with the telephone number which Linda Perez
22 originally placed on the special checking account
23 application which she filled out at the Chemical
24 Bank on April 4, 1977, Government's Exhibit 8.

25 In addition, Government's Exhibit 8 indi-

2 cates the address, both personal and business, of
3 Linda Perez to be 2042 Webster Avenue, Bronx, New York,
4 which is also the defendant's address.

5 From all of this testimony and evidence the
6 court infers knowledge of the thefts by the defendant
7 and his active participation in the crimes charged.
8 However, there is one more piece of evidence which ties
9 the defendant into the theft of these checks. Two
10 witnesses, Ivy Brown and Noel G. Watkis, testified
11 that their mail boxes were broken into on April 1 and
12 April 4, 1977 respectively, the identical dates to the
13 dates on the card, Government's Exhibit 13. At the
14 time of his arrest on April 13, 1977, the defendant
15 had a vinyl bag in his possession which he permitted
16 to be opened and which contained, among other things,
17 a crowbar.

18 The court finds that the defendant used the
19 crowbar to break into the mail boxes of Ivy Brown and
20 Noel G. Watkis on April 1st and April 4, 1977
21 respectively, and further finds that the defendant stole
22 a U. S. Treasury check from each of those two mail
23 boxes on those occasions; that he recorded the amounts
24 of the checks and the dates he stole them on the card,
25 Government's Exhibit 13, and that he thereafter turned

2 the checks over to his sister, Marjorie Benton, also
3 known as Linda Perez, to cash them. As I have
4 already noted, Marjorie Benton deposited the
5 checks with a third party, the Chemical Bank, and there-
6 after withdraw \$1200 from the bank.

7 To summarize, the court finds that the de-
8 fendant knew that the checks in counts 1 and 2 were
9 U. S. Treasury checks and that he stole them from the
10 mail boxes of Ivy Brown and Noel G. Watkis on April 1,
11 1977 and April 4, 1977 respectively, and turned them
12 over to Marjorie Benton, also known as Linda Perez,
13 to cash. The court finds that these checks are in-
14 cluded within the sum of \$1200 which was thereafter
15 obtained by Marjorie Benton.

16 The court finds the defendant to have aided
17 and abetted Marjorie Benton in the commission of
18 the crimes charged in counts 1 and 2, and finds the
19 defendant guilty on counts 1 and 2.

20 The court finds that the government has
21 failed to prove beyond a reasonable doubt that the
22 defendant aided and abetted the commission of the
23 remaining crimes prior to the dates on which the crimes
24 charged in counts 3, 4, 5 and 13 were completed.
25 Accordingly, the defendant is found not guilty on

2 counts 3, 4, 5 and 13.

3 The foregoing constitutes the decision of
4 the court.

5 Mr. Joy?

6 MR. JOY: Your Honor, I don't suppose it
7 would serve any useful purpose to move to set aside
8 your own verdict as against the weight of the evidence,
9 but I must say the possession of a crowbar in a vinyl
10 case that he told the inspector he finished doing
11 some repair work would indicate that he had committed
12 two burglaries of post office boxes some five days,
13 six days before, and --

14 THE COURT: If that stood alone I would
15 possibly agree with you but, you see, Mr. Joy, it is
16 the combination of the evidence that has persuaded
17 the court. The crowbar is but one item. The card
18 was crucial. The testimony of Mr. Leitenis was
19 crucial. Under the circumstances, I suggest that
20 there was sufficient evidence for the court to reach
21 its decision. The motion to set aside the decision
22 of the court will be ruled upon if and when the U. S.
23 attorney indicates that she has nothing to add at this
24 time.

25 MS. WILLIAMS: I have nothing to add at

CERTIFICATE OF SERVICE

October 7, 1977

I certify that a copy of this brief and appendix has been mailed to the United States Attorney for the Southern District of New York.

Edward F. Joy